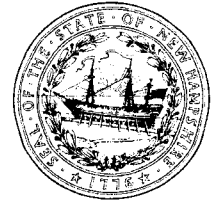




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Martin Zekos and Nancy Zekos
HC 60 Box 130
Charlestown, NH 03603

Re: Property at 235 Center Road, Unity
Wetland Bureau File #2005-2255

ADMINISTRATIVE ORDER
No. WD 06-001

January 12, 2006

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to Martin and Nancy Zekos pursuant to RSA 482-A:6. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.
2. Martin and Nancy Zekos are individuals having a mailing address of HC 60 Box 130 Charlestown, NH 03603.

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 482-A, the Department of Environmental Services ("DES") regulates dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
2. RSA 482-A:3, I states that "no person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without permit from [DES]."
3. RSA 482-A:14, III provides that "(f)ailure, neglect or refusal to comply with [RSA 482-A] or rules adopted under [that] chapter, or an order or condition of a permit issued under [RSA 482-A], and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by [RSA 482-A] shall be deemed violations of RSA 482-A."
4. Martin and Nancy Zekos are the owners of land located at 235 Center Road in Unity, more particularly described on the Unity Tax Map as Map 12-C4 Lot 478 ("the Property").

5. On September 14, 2005, DES received a complaint from the Unity Conservation Commission alleging that a pond had been constructed in wetlands.
6. By letter dated September 27, 2005, DES notified Martin and Nancy Zekos of the complaint, requested that they refrain from further work and respond to the allegation in writing within 20 days of receipt of the letter.
7. On October 11, 2005, DES personnel received a response letter from Nancy Zekos stating that the pond was not constructed in a wetland and construction of the pond had been completed.
8. On October 21, 2005, DES personnel conducted a site inspection of the Property and observed the following:
 - a. A pond had been constructed. The open water in the pond measured approximately 200 feet long x 60 feet wide resulting in the dredging of approximately 15,000 square feet of jurisdictional wetlands;
 - b. A berm was constructed around the pond of varying width measuring between approximately 30 – 85 feet wide resulting in the filling of approximately 18,000 square feet of jurisdictional wetlands. The berm around the pond had been seeded and vegetation was growing;
 - c. An overflow ditch measuring approximately 150 feet long and 5 feet wide, had been excavated resulting in the dredging and filling of approximately 750 square feet of jurisdictional wetlands;
 - d. A path had been constructed on the northwest side of the pond, measuring approximately 75 feet long by 10 feet wide resulting in the filling of approximately 750 square feet of jurisdictional wetlands;
 - e. Approximately 2,000 square feet of additional jurisdictional wetland on the northwest side of the pond, near the overflow ditch had been filled with dredge spoils.

D. DETERMINATION OF VIOLATIONS

1. Martin and Nancy Zekos have violated RSA 482-A:3, I, by dredging approximately 15,000 square feet of wetland to construct a pond without a permit from DES.
2. Martin and Nancy Zekos have violated RSA 482-A:3, I, by filling approximately 18,000 square feet of wetland to construct a berm around a pond without a permit from DES.
3. Martin and Nancy Zekos have violated RSA 482-A:3, I, by dredging and filling approximately 750 square feet of wetland to construct an overflow ditch without a permit from DES.

4. Martin and Nancy Zekos have violated RSA 482-A:3, I, by filling approximately 750 square feet of wetland to construct a path without a permit from DES.
5. Martin and Nancy Zekos have violated RSA 482-A:3, I, by filling approximately 2,000 square feet of wetland with dredge spoils without a permit from DES.

E. ORDER

Based on the above findings, DES hereby orders Martin and Nancy Zekos as follows:

1. **Within 10 days of the date of this Order**, retain a certified wetland scientist to develop restoration plans in accordance with Item 2 below, supervise the implementation of the restoration in accordance with Item 3 below, and to submit restoration progress reports.
2. **Within 90 days of the date of this Order**, submit a wetlands restoration plan to the DES Wetland Bureau for review and approval. The restoration plan shall be prepared by a certified wetland scientist, and include provisions for restoration of the wetland and surface waters impacted by activities at the Property. The following shall be submitted with the restoration plan:
 - a. A plan with dimensions, drawn to scale, showing:
 - i. existing conditions and jurisdictional impacts on the sites, with delineated jurisdictional wetland boundaries, and land topography; and
 - ii. proposed conditions after reestablishing the jurisdictional areas;
 - b. A detailed description of the proposed means of erosion control (silt fence, hay bales, etc.) and stabilization of the restoration area;
 - c. A detailed description of the proposed planting plan for the stabilization and revegetation of the restoration areas;
 - d. A description of the proposed construction sequence, equipment, methods for accomplishing restoration and anticipated restoration compliance date.
 - e. A description of the method of documenting at least 75% survival of all vegetation planted during the restoration project. This should include at a minimum, an initial monitoring report documenting that restoration has been completed and monitoring progress reports for two successive growing seasons following completion of the restoration project. These reports should be submitted to DES on July 1, 2006, October 30, 2006 and October 30, 2007, respectively.
3. **Implement** the restoration plans proposed in accordance with Item 2 above only after receiving written approval, and as conditioned, by DES.
4. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Dawn Buker, Compliance Specialist
DES Water Division
P.O. Box 95
Concord, NH 03302-0095
Fax: (603) 271-6588
e-mail: dbuker@des.state.nh.us

F. APPEAL

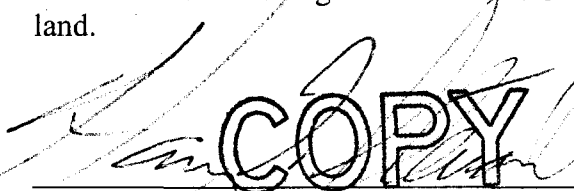
Any person aggrieved by this Order may request that DES reconsider the Order within 20 days of the date of the Order. The request for reconsideration must comply with Wt 203.01(d) (copy attached), and will be processed in accordance with Wt 203.01(e)-(j). Any party not satisfied with the decision on reconsideration may appeal to the Wetlands Council. Please note under RSA 482-A:10, II, the Council may not consider any ground that is not set forth in the request for reconsideration.

Filing an appeal or motion for reconsideration does not relieve Martin Zekos nor Nancy Zekos of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 482-A:13 and RSA 482-A:14 provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. DES will continue to monitor the Zekos' compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Sullivan County Registry of Deeds so as to run with the land.



Harry T. Stewart, Director
Water Division



Michael P. Nolin, Commissioner
Department of Environmental Services

Certified Mail/RRR:

ec: Gretchen R. Hamel, Legal Unit Administrator ✓
Public Information Officer, DES PIP Office
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Dawn Buker, DES Wetlands Bureau
cc: United States Army Corps of Engineers, Regulatory Office New England District
Unity Board of Selectmen
Unity Conservation Commission